



SUPPLEMENTAL STAFF REPORT FOR MEDICAL MARIJUANA-RELATED REVISIONS TO THE CASCADE COUNTY ZONING REGULATIONS

Presented By: Charity N. Yonker, Planning Director

Presented For: Public Hearing in front of the Board of County Commissioners on November 12, 2020 to consider the Cascade County Planning Board's Recommendations for Text and Map Revisions to the Cascade County Zoning Regulations

This Supplemental Staff Report relates only to medical marijuana-related revisions to the Cascade County Zoning Regulations ("CCZR") and provides supplemental information to the primary Staff Report prepared addressing all proposed revisions to the text and map of the CCZR. This Report is intended to address the Planning Department's initiated revisions and the Planning Board's recommendations after extensive public hearings, public participation and comments, and Board deliberation. This report separates the area of topic into the following sections: (1) definitions; (2) setback/buffer requirements; (3) permissive code; (4) use expansion; and (5) public comments.

I. Definitions

a. Planning Department's Initial Recommendations

On February 19, 2019, the Planning Department presented its initial proposal for revisions to the Cascade County Planning Board ("Planning Board"). The Planning Department made the following recommendations for adding and removing medical-marijuana land use terminology as follows:

Add to the text of CCZR § 2: "Medical Marijuana Registered Premises: A place, structure, and/or building where a provider or marijuana-infused products provider: (a) has indicated that marijuana will be cultivated, chemical manufacturing will occur, or marijuana-infused products will be manufactured for one or more registered cardholders; or (b) has established a dispensary for sale of marijuana or marijuana-infused products to one or more registered cardholders. "Provider," "marijuana-infused product," "marijuana-infused products provider," "chemical manufacturing," "dispensary," and "registered cardholder" all have the meanings defined in MCA § 50-46-302. A registered premises is only allowed in a Heavy Industrial (I-2) District."

The purpose behind adding this definition was to provide clarity by mirroring the Montana Medical Marijuana Act ("Act") and to remove any confusion regarding medical marijuana facilities of all types. See App. 1.

Add to the text of CCZR § 2: "Medical Marijuana Testing Facility: A building where one or more qualified persons, licensed by the Montana Department of Health and Human Services and meeting the requirements of MCA § 50-46-311 provides testing of small samples of

marijuana and marijuana-infused products, and provides information regarding the chemical composition, the potency of a sample, and the presence of molds, pesticides, or other contaminants in a sample. "Marijuana" has the meaning defined in MCA § 50-32-101, and "marijuana-infused products" has the meaning defined in MCA § 50-46-302. A testing facility is only allowed in a Heavy Industrial (I-2) District."

The purpose behind adding this definition was to provide clarity by defining a land use associated with the Act not otherwise provided for in the CCZR and is consistent with the Act. See App. 1.

Remove from the text of CCZR § 2: "Medical Marijuana Dispensary: A facility where marijuana and/or marijuana infused products are made available for medical purposes, in compliance with state, local, health and safety regulations."

This definition was removed because it is outdated and does not accurately reflect the current laws under the Act and is incorporated by reference into the proposed definition additions above to reflect the meaning as defined under MCA § 50-46-302. The Act defines "Dispensary" to mean "a registered premises from which a provider or marijuana-infused provider is approved by the department [DPHHS] to dispense marijuana and marijuana-infused products to a registered cardholder." MCA § 50-46-302(6).

Remove from the text of CCZR § 2: "Medical Marijuana Provider: A Montana resident 18 years of age or older who is authorized by the department to assist a registered cardholder as allowed under this part. (b) The term does not include the cardholder's treating physician or referral physician. MCA § 50-46-302(10)."

This definition was removed because it is outdated and does not accurately reflect the current laws under the Act and is incorporated by reference into the proposed definition additions above to reflect the meaning as defined under MCA § 50-46-302. The Act defines "Provider" as "a person licensed by the department [DPHHS] to dispense marijuana and marijuana-infused products to a registered cardholder." MCA § 50-46-302(18)(a).

b. Cascade County Planning Board's Recommendations

On September 10, 2019, the Cascade County Planning Board recommended adding and removing the following medical-marijuana land use terminology after receiving numerous public comments and hearing public participants testimony and arguments, and Board discussion:

Add to the text of CCZR § 2: "Medical Marijuana Registered Premises: A place, structure, and/or building where a provider or marijuana-infused products provider: (a) has indicated that marijuana will be cultivated, chemical manufacturing will occur, or marijuana-infused products will be manufactured for one or more registered cardholders; or (b) has established a dispensary for sale of marijuana or marijuana-infused products to one or more registered cardholders. "Provider," "marijuana-infused product," "marijuana-infused products provider," "chemical manufacturing," "dispensary," and "registered cardholder" all have the meanings defined in MCA § 50-46-302. A registered premises is only allowed in a Heavy Industrial (I-2) District, Light Industrial (I-1) District, Commercial (C) District, Agricultural (A) District, and Mixed Use 20 (MU-20) District with the appropriate setbacks."



Add to the text of CCZR § 2: “Medical Marijuana Testing Facility: A building where one or more qualified persons, licensed by the Montana Department of Health and Human Services and meeting the requirements of MCA § 50-46-311 provides testing of small samples of marijuana and marijuana-infused products, and provides information regarding the chemical composition, the potency of a sample, and the presence of molds, pesticides, or other contaminants in a sample. “Marijuana” has the meaning defined in MCA § 50-32-101, and “marijuana-infused products” has the meaning defined in MCA § 50-46-302. A testing facility is only allowed in a Heavy Industrial (I-2) District, **Light Industrial (I-1) District, Commercial (C) District, Agricultural (A) District, and Mixed Use 20 (MU-20) District with the appropriate setbacks.**”

Remove from the text of CCZR § 2: “Medical Marijuana Dispensary: A facility where marijuana and/or marijuana infused products are made available for medical purposes, in compliance with state, local, health and safety regulations.”

Remove from the text of CCZR § 2: “Medical Marijuana Provider: A Montana resident 18 years of age or older who is authorized by the department to assist a registered cardholder as allowed under this part. (b) The term does not include the cardholder’s treating physician or referral physician. MCA § 50-46-302(10).”

c. Current Recommendation:

The Planning Department recommends the last sentence of the proposed definition for “Medical Marijuana Registered Premises” and “Medical Marijuana Testing Facility” be removed as the land uses should be set forth as enumerated under the respective zoning districts where allowed as either a principle or special use. Placing the districts in the definitions is redundant and is not consistent with all other land uses defined and enumerated in the CCZR. Any setback requirements should be a separate supplemental provision in CCZR § 8 and/or under the enumerated land uses within the respective district(s). Such changes are merely for consistency purposes within the CCZR and is not intended as a substantive change. Expansion of the medical-marijuana land uses into other zoning districts and setbacks are discussed below.

Therefore, the Planning Department recommends the following changes to CCZR § 2 “Definitions”:

Add: “Medical Marijuana Registered Premises: A place, structure, and/or building where a provider or marijuana-infused products provider: (a) has indicated that marijuana will be cultivated, chemical manufacturing will occur, or marijuana-infused products will be manufactured for one or more registered cardholders; or (b) has established a dispensary for sale of marijuana or marijuana-infused products to one or more registered cardholders. “Provider,” “marijuana-infused product,” “marijuana-infused products provider,” “chemical manufacturing,” “dispensary,” and “registered cardholder” all have the meanings defined in MCA § 50-46-302.”

Add: “Medical Marijuana Testing Facility: A building where one or more qualified persons, licensed by the Montana Department of Health and Human Services and meeting the requirements of MCA § 50-46-311 provides testing of small samples of marijuana and marijuana-infused products, and provides information regarding the chemical composition, the potency of a sample, and the presence of molds, pesticides, or other contaminants in a



sample. “Marijuana” has the meaning defined in MCA § 50-32-101, and “marijuana-infused products” has the meaning defined in MCA § 50-46-302.”

Remove: “Medical Marijuana Dispensary: A facility where marijuana and/or marijuana infused products are made available for medical purposes, in compliance with state, local, health and safety regulations.”

Remove: “Medical Marijuana Provider: A Montana resident 18 years of age or older who is authorized by the department to assist a registered cardholder as allowed under this part. (b) The term does not include the cardholder’s treating physician or referral physician. MCA § 50-46-302(10).”

II. Marijuana Setbacks/Buffer Zone

The current CCZR § 8.19 labeled “Medical Marijuana Prover” provides:

“Any facility may not be located within one-thousand (1000) feet of an existing residence, residential district, educational facility, worship facility, day care, or other facilities where minors gather.”

The current regulation only allow medical marijuana land uses in the Heavy Industrial District subject to this 1000-foot setback requirement. Map Exhibit 1 is attached to show how this setback requirement limits potential property within that District from being used for medical marijuana.

The Planning Department initially proposed, and the Planning Board adopted the recommendation to change the setback requirements as follows in what is proposed as CCZR § 8.22:

“The proposed registered premise shall not be within 500 feet of and on the same street as a building used exclusively as a worship facility or educational facility. The distance must be measured in a straight line from the center of the nearest entrance of the worship facility or educational facility to the nearest entrance of the licensee’s premises.”

This setback requirement is consistent with the Act which provides:

The department [DPHHS] or state laboratory, as applicable, may deny a license or endorsement if the applicant’s proposed registered premises or testing laboratory: (i) is not approved by local building, health, or fire officials; or (ii) *is within 500 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school or postsecondary school other than a commercially operated school. The distance must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee’s premises.*

MCA § 50-46-312(4)(a) (emphasis added). The 500-foot setback would keep county permitting and the State licensing requirements consistent with each other. Map Exhibit 2 is attached showing the 500-foot setback effect on the I-2 District, which would make additional property available to medical marijuana land uses within the I-2 District.

In the event, medical marijuana land uses are expanded to other zoning districts such setback requirements would apply.



The Planning Department recommends adding language to the setback requirement that explains when the setback is measured as follows:

“The proposed registered premise shall not be within 500 feet of and on the same street as a building used exclusively as a worship facility or educational facility **that are present at the time of application**. The distance must be measured in a straight line from the center of the nearest entrance of the worship facility or educational facility to the nearest entrance of the licensee’s premises.”

The Planning Board discussed whether or not a permitted medical marijuana use could be placed in violation of the regulations if another property owner were to decide to reside or open a school within the set back of an existing facility. The CCZR has incorporated language for other land uses within the regulations that make it clear when there are particular setbacks for certain land uses. This language can be found for “casino,” “quarry,” “public or privately owned airport, landing area, or helipad,” “motorized sports entertainment,” “commercial propagation, boarding, grazing, or butchering of animals and fowl...,” etc. The “commercial propagations, boarding, grazing, or butchering...” use has the exact proposed language which states that “[t]he adjacent residences must be residences that are present prior to the date of receiving the application for this use.” Such similar language is recommended to incorporate into the setback requirement for medical marijuana uses to keep the regulation consistent and make it easier for the public to understand when these setback requirements are determined.

This setback provision was initially proposed as CCZR § 8.22 within the supplemental regulation section of the regulations. The I-2 District is the only zoning district in the regulations that acts as a catchall for permitted principal uses by allowing “all non-residential uses not otherwise prohibited by law,” rather than enumerating all permitted principal uses. If medical marijuana remains a permitted principal use only in the I-2 District, then CCZR § 8.22 should remain as proposed. However, if medical marijuana uses are expanded to other zoning districts, this setback provision should be included with those call outs in addition to the supplemental regulation proposed in CCZR § 8.22.

III. Permissive Code

The Planning Department did not propose any expansion of medical marijuana uses to other zoning district, but did make other recommendation as follows:

REMOVE: CCZR § 2 – “Permissive Code – Any use not specifically permitted or otherwise provided for, is not permitted.”

ADD: CCZR § 1.3 “Permissive Code” – These Regulations are permissive. Any use not specifically permitted or otherwise provided for in these Regulations shall not be allowed within the Zoning Jurisdictional Area.

REMOVE: CCZR § 7.3.11 “Commercial District” – Uses Not Permitted (1) Medical Marijuana Provider

REMOVE: CCZR § 7.8.11 “Mixed Use District” – Uses Specifically Not Permitted: (1) Medical Marijuana Provider



The CCZR is a permissive code meaning any use not specifically permitted or otherwise provided for, is not allowed. The “Permissive Code” definition is located in CCZR § 2. It is recommended as part of the overall revisions to create a separate provision in CCZR § 1.3 for a “Permissive Code” provision.

Further, such call outs for medical marijuana land uses in the Commercial and Mixed Use Districts are unnecessary given the regulations permissive nature. Having such provisions included under some district, but not other districts makes this confusing for the public. The removal of these explicit use prohibition helps keep regulations consistent and clarifies what is allowed and disallowed in the respective zoning districts.

The Planning Board recommended removal of CCZR §§ 7.3.11 and 7.8.11 and the addition of CCZR § 1.3 and removal of “permissive code” from CCZR § 2 when it adopted all other recommended provision in CCZR §§ 1 through 18.

IV. Use Expansion

The Planning Department did not propose any expansion of medical marijuana uses outside the I-2 District. However, the Planning Board recommended the medical marijuana land uses be included as permitted principal uses in the Agricultural, Mixed Use 20, Commercial, Light Industrial, and Heavy Industrial Districts. They incorporated this recommendation into the last sentence of the definitions for “Medical Marijuana Registered Premises” and “Medical Marijuana Testing Facility” as discussed above.

It is recommended by the Planning Department that such an expansion should result in the incorporation of those land uses into the respective zoning districts under the permitted principal use section rather than through a definition.

V. Public Comments

Citizens who were for the expansion of medical marijuana uses in Cascade County expressed that an expansion would allow easier access for card holding patients by giving easier and safer access to patients. Others wanted medical marijuana to be grown in the Agricultural District. It was also expressed that there are limited available or affordable sites in the Heavy Industrial District for medical marijuana store fronts, which limits development options in the county.

Those citizens who expressed concern as a result of an expansion of medical marijuana uses were concerned for the protection of children and community values, while other citizens expressed a desire to keep the status quo for keeping medical marijuana uses located only in the Heavy Industrial District with the 1000-foot setback requirements.

PROPOSED MOTIONS FOR CONSIDERATION:

1. I move the Board of County Commissioners after consideration of the public comments, public testimony, and the Planning Board recommendations, adopt the findings of fact and conclusions contained in the Staff Reports and made on the record and:
 - a. **Adopt** the following medical marijuana-related definitional changes in CCZR § 2 “Definitions”:



- i. **Add:** “Medical Marijuana Registered Premises: A place, structure, and/or building where a provider or marijuana-infused products provider: (a) has indicated that marijuana will be cultivated, chemical manufacturing will occur, or marijuana-infused products will be manufactured for one or more registered cardholders; or (b) has established a dispensary for sale of marijuana or marijuana-infused products to one or more registered cardholders. “Provider,” “marijuana-infused product,” “marijuana-infused products provider,” “chemical manufacturing,” “dispensary,” and “registered cardholder” all have the meanings defined in MCA § 50-46-302.”
 - ii. **Add:** “Medical Marijuana Testing Facility: A building where one or more qualified persons, licensed by the Montana Department of Health and Human Services and meeting the requirements of MCA § 50-46-311 provides testing of small samples of marijuana and marijuana-infused products, and provides information regarding the chemical composition, the potency of a sample, and the presence of molds, pesticides, or other contaminants in a sample. “Marijuana” has the meaning defined in MCA § 50-32-101, and “marijuana-infused products” has the meaning defined in MCA § 50-46-302.”
 - iii. **Remove:** “Medical Marijuana Dispensary: A facility where marijuana and/or marijuana infused products are made available for medical purposes, in compliance with state, local, health and safety regulations.”
 - iv. **Remove:** “Medical Marijuana Provider: A Montana resident 18 years of age or older who is authorized by the department to assist a registered cardholder as allowed under this part. (b) The term does not include the cardholder’s treating physician or referral physician. MCA § 50-46-302(10).”
- b. **Adopt** the definitional changes in CCZR § 2 “Definitions” as recommended by the Planning Board:
- i. **Add:** “Medical Marijuana Registered Premises: A place, structure, and/or building where a provider or marijuana-infused products provider: (a) has indicated that marijuana will be cultivated, chemical manufacturing will occur, or marijuana-infused products will be manufactured for one or more registered cardholders; or (b) has established a dispensary for sale of marijuana or marijuana-infused products to one or more registered cardholders. “Provider,” “marijuana-infused product,” “marijuana-infused products provider,” “chemical manufacturing,” “dispensary,” and “registered cardholder” all have the meanings defined in MCA § 50-46-302. A registered premises is allowed in a Heavy Industrial (I-2) District, Light Industrial (I-1) District, Commercial (C) District, Agricultural (A) District, and Mixed Use 20 (MU-20) District with the appropriate setbacks.”



- ii. **Add:** “Medical Marijuana Testing Facility: A building where one or more qualified persons, licensed by the Montana Department of Health and Human Services and meeting the requirements of MCA § 50-46-311 provides testing of small samples of marijuana and marijuana-infused products, and provides information regarding the chemical composition, the potency of a sample, and the presence of molds, pesticides, or other contaminants in a sample. “Marijuana” has the meaning defined in MCA § 50-32-101, and “marijuana-infused products” has the meaning defined in MCA § 50-46-302. A registered premises is allowed in a Heavy Industrial (I-2) District, Light Industrial (I-1) District, Commercial (C) District, Agricultural (A) District, and Mixed Use 20 (MU-20) District with the appropriate setbacks.”
- iii. **Remove:** “Medical Marijuana Dispensary: A facility where marijuana and/or marijuana infused products are made available for medical purposes, in compliance with state, local, health and safety regulations.”
- iv. **Remove:** “Medical Marijuana Provider: A Montana resident 18 years of age or older who is authorized by the department to assist a registered cardholder as allowed under this part. (b) The term does not include the cardholder’s treating physician or referral physician. MCA § 50-46-302(10).”
- c. **Deny** the definitional changes recommended by the Planning Board and the medical marijuana-related definitions in CCZR § 2 “Definitions” and:
 - i. **Retain:** “Medical Marijuana Dispensary: A facility where marijuana and/or marijuana infused products are made available for medical purposes, in compliance with state, local, health and safety regulations.”
 - ii. **Retain:** “Medical Marijuana Provider: A Montana resident 18 years of age or older who is authorized by the department to assist a registered cardholder as allowed under this part. (b) The term does not include the cardholder’s treating physician or referral physician. MCA § 50-46-302(10).”
- 2. I move the Board of County Commissioners after consideration of the public comments, public testimony, and the Planning Board recommendations, adopt the findings of fact and conclusions contained in the Staff Reports and made on the record and:
 - i. **Adopt** the recommendation of the Planning Board to adopt the proposed language for CCZR § 8.22 “Medical Marijuana Setback” as follows:
 - 1. “The proposed registered premise shall not be within 500 feet of and on the same street as a building used exclusively as a worship facility or educational facility. The distance must be measured in a straight line from the center of the nearest entrance of the worship facility or educational facility to the nearest entrance of the licensee’s premises.”



- ii. **Adopt** the following language for CCZR § 8.22 “Medical Marijuana Setback” and incorporate the setback language in all enumerated medical marijuana land use call outs for the respective zoning districts as follows:

1. “The proposed registered premise shall not be within *500 feet* of and on the same street as a building used exclusively as a worship facility or educational facility *that are present at the time of application*. The distance must be measured in a straight line from the center of the nearest entrance of the worship facility or educational facility to the nearest entrance of the licensee’s premises.”

OR

2. “The proposed registered premise shall not be within *1000 feet* of and on the same street as a building used exclusively as a worship facility or educational facility *that are present at the time of application*. The distance must be measured in a straight line from the center of the nearest entrance of the worship facility or educational facility to the nearest entrance of the licensee’s premises.”

- iii. **Deny** the Planning Board’s recommendation to adopt the proposed language for CCZR § 8.22 “Medical Marijuana Setback” and **retain** the existing setback requirement as currently written.

3. I move the Board of County Commissioners after consideration of the public comments, public testimony, and the Planning Board recommendations, adopt the findings of fact and conclusions contained in the Staff Reports and made on the record and:

- i. **Adopt** the recommendation of the Planning Board to allow “medical marijuana registered premises” and “medical marijuana testing facilities” land uses in the Agricultural District, the Mixed Use 20 District, the Commercial District, the Light Industrial District, and the Heavy Industrial District.

- ii. **Deny** the recommendation of the Planning Board and move to allow “medical marijuana registered premises” and “medical marijuana testing facilities” land uses to be added to the text of each respective zoning district as a [permitted principle or special use] in the following zoning district(s):



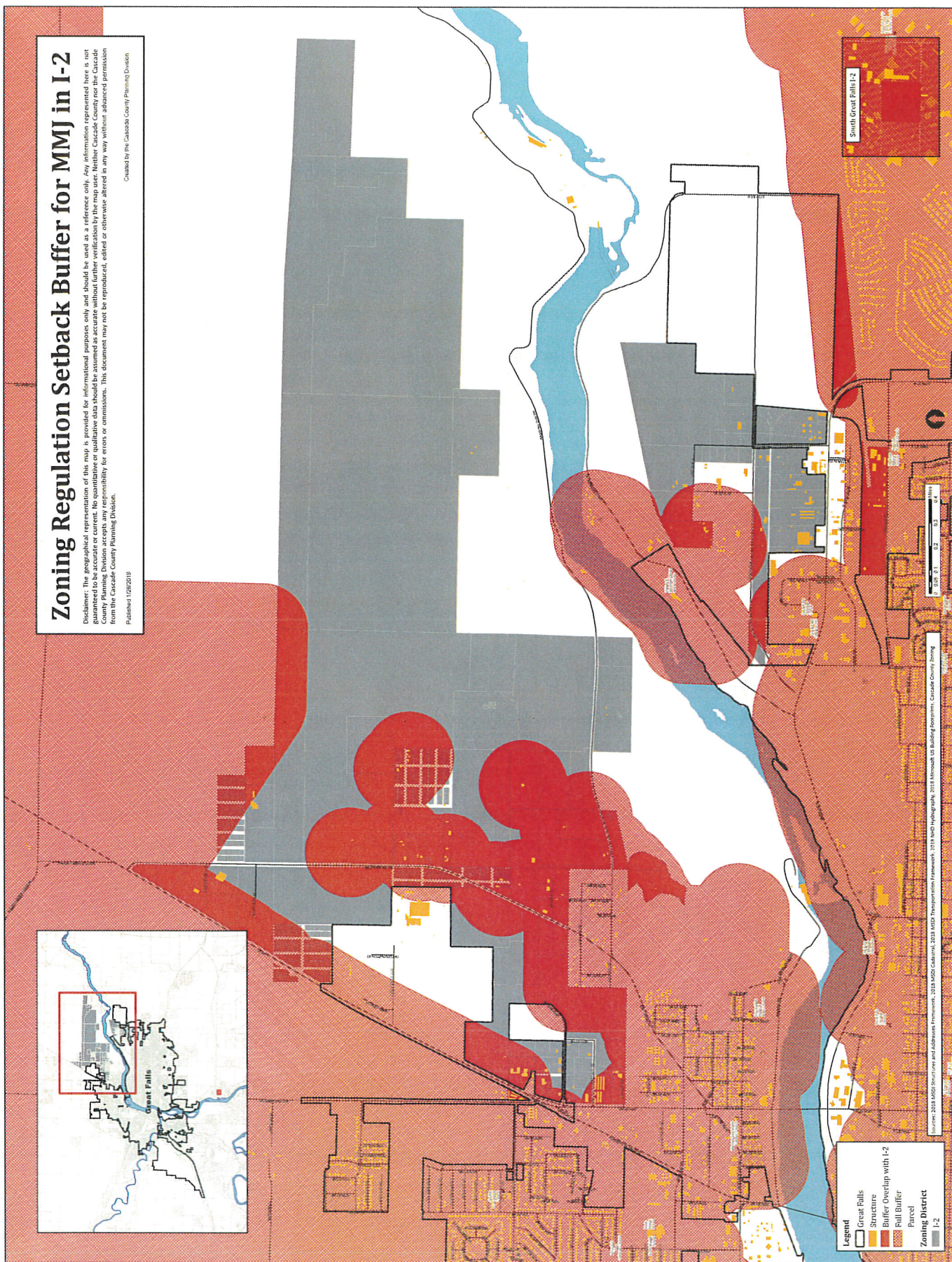
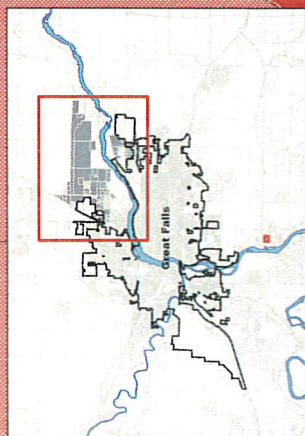
MAP EXHIBIT 1
1000-FOOT BUFFER MAP

Zoning Regulation Setback Buffer for MMJ in I-2

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Published 12/20/2019



- Great Falls
- Structure
- Buffer
- Rail Buffer
- Parcel
- Zoning District
- I-2

Source: 2018 ADOZ Structure and Address Information, 2018 ADOZ Transportation Framework, 2018 ADOZ Planning Framework, 2018 ADOZ Planning Framework, Cascade County Planning



MAP EXHIBIT 2
500-FOOT BUFFER MAP

Current Setback Buffer for MMJ in I-2

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Published 1/28/2019

